



DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 230508-0125]**

**RIN 0648-BL45**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions;  
Fisheries of the Northeastern United States; Amendment 23 to the Summer  
Flounder, Scup, and Black Sea Bass Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Mid-Atlantic Fishery Management Council has submitted the Black Sea Bass Commercial State Allocation Amendment (Amendment 23) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Amendment 23 proposes to establish commercial state-by-state black sea bass allocations in the Federal fishery management plan and regulations, to change the trigger for the in-season closure accountability measures, and change the state-overage payback. Amendment 23 is intended to address the allocation-related impacts of the significant changes in the distribution of black sea bass that have occurred since the original allocations were implemented.

**DATES:** Comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2023-0041, by the following method:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-

0041 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personally identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of Amendment 23, including the Environmental Assessment, the Regulatory Impact Review, and the Regulatory Flexibility Analysis (EA/RIR/RFA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the Internet at: <https://www.mafmc.org/actions/bsb-commercial-allocation>.

**FOR FURTHER INFORMATION CONTACT:** Emily Keiley, Fishery Policy Analyst, (978) 281-9116, [emily.keiley@noaa.gov](mailto:emily.keiley@noaa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the black sea bass fishery. Amendment 23 considers changes to the management of the commercial black sea bass fishery. Specifically, this amendment proposes to establish the commercial black sea bass state-by-state allocations in the Federal FMP and regulations, while also making changes to those state allocations (previously managed only under the Atlantic States Marine

Fisheries Commission's FMP), proposes a change to the Federal in-season closure regulations for the commercial black sea bass fishery, and proposes a change to the provisions that apply when a quota overage occurs to incorporate the potential for a state-level overage. The intended purpose of the proposed state allocation changes is to provide fair and equitable access to the commercial black sea bass fishery among states in the management unit, taking into consideration the historical dependence of the states on the fishery, as well as changes in abundance and stock distribution over time. The purpose of the change to the in-season closure trigger is to continue to prevent commercial annual catch limit (ACL) overages while minimizing potential negative socioeconomic impacts of Federal in-season closures on states that have not fully harvested their allocations.

The Council and Commission's Black Sea Bass Board initially approved their respective amendment and addendum during a joint meeting on February 1, 2021. However, in response to a remand from the Commission's Policy Board, the two management bodies revisited their previous recommendations and voted to revise the commercial state quota allocations. This action considers the proposed changes to the Federal FMP. The Commission's Addendum XXXIII measures are final and, while the state allocations are not currently in the Federal FMP, they became effective and were implemented by the Commission and the states on January 1, 2022. The proposed regulations for this proposed rule were deemed by the Mid-Atlantic Council to be consistent with its intent for Amendment 23; however, under section 304(a)(3) of the (Magnuson-Stevens Fishery Conservation and Management Act) Magnuson-Stevens Act, the Secretary of Commerce may disapprove, or partially approve an amendment submitted by the Council if it is determined to be inconsistent with a provision of the Magnuson-Stevens Act or other applicable law. The regulations proposed herein would be necessary if the Secretary approves Amendment 23 in full. If Amendment 23 is disapproved, in whole or in part, the relevant proposed regulations would no longer be

necessary. For a full description of the agency's considerations for approving, disapproving, or partially approving Amendment 23, and to provide comment on that decision, please refer to the Notice of Availability published in the **Federal Register** on May 4, 2023 (88 FR 28456).

## **Proposed Measures**

### *Council Management of State Allocations*

This amendment considers whether the state allocations should remain only in the Commission's Interstate FMP, or if they should be included in both the Council's and the Commission's FMPs. The stated purposes are: to provide fair and equitable access to the commercial black sea bass fishery among states in the management unit, taking into consideration the historical dependence of the states on the fishery, as well as changes in abundance and stock distribution over time; to allow the Council and Commission to determine which management measures are most appropriate for joint management in both FMPs; and to help prevent commercial ACL overages while minimizing potential negative socioeconomic impacts of Federal in-season closures on states that have not fully harvested their allocations. Under the Council and Board's preferred alternative, the state allocations would be added to the Federal FMP. If approved, this change would mean that future changes to the allocations must be considered through a joint action of the Council and Commission. This change would also shift an administrative burden and the cost of monitoring state quotas and processing state quota transfers to the Regional Office, similar to what is done for Atlantic bluefish and summer flounder. We are specifically considering disapproving the addition of the state allocations to the Federal FMP. A summary of our rationale is provided in the Notice of Availability for this action published in the **Federal Register** on May 4, 2023 (88 FR 28456).

### *Overages and State Payback Requirements*

Under the Commission FMP, overages of state-specific quotas are only required

to be paid back by a state when the coastwide quota has been exceeded. If the state allocations are included in the Federal FMP, the Council and Board's preferred alternative is to maintain this payback provision, and add it to the Federal FMP.

In years when the annual landings do not exceed the coastwide quota, no state-level or coastwide paybacks would be required. If the annual coastwide quota is exceeded, states with quota overages will be required to pay back those overages in the following year. All black sea bass landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the black sea bass were harvested. Any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas. The overage deduction will be based on landings for the current year through October 31, and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year.

#### *Commercial State Allocation Scheme*

This joint action considered changes to the distribution of commercial black sea bass quota among the states. Because the state commercial allocations are not currently a part of the Federal FMP, the Commission considered and implemented a new allocation formula in its FMP. The Council is recommending we adopt the same allocation scheme in the Federal FMP.

This new allocation does not specify fixed-allocation percentages, but defines a process for calculating allocations that is partially based on biomass distribution. The allocations would be modified through the specifications process each time new biomass distribution information is available. Specifically, the state allocation percentages will be calculated using the following steps:

- 1) Connecticut's baseline allocation was increased from 1 to 3 percent, and New

York's baseline allocation was increased from 7 to 8 percent;

- 2) Seventy-five percent of the coastwide quota is then allocated according to the new baseline allocations (*i.e.*, the original allocations implemented by Amendment 13 to the Interstate FMP in 2003 as modified to account for the initial increases to Connecticut and New York);
- 3) Twenty-five percent of the quota is allocated to three regions based on the most recent regional biomass distribution information. The three regions are: Maine-New York, New Jersey, and Delaware-North Carolina; and,
- 4) The regional allocations are distributed among states within a region in proportion to their baseline allocations, except Maine and New Hampshire would each receive 1 percent of the northern region quota.

While we are considering disapproving the inclusion of these revised allocations in the Federal FMP due to the unnecessary increase in administrative burden and inefficiencies, and the lack of northern states as members of the Council as described above, we are supportive of the revised approach that was developed by the Council and Commission as it includes consideration of the distribution of the black sea bass stock, and the ability to revise allocations as the stock shifts. As noted, the Commission has already implemented this process for the development of the 2023 commercial quotas.

#### *Federal Commercial In-season Closure Trigger*

Currently, the Federal FMP requires a commercial coastwide in-season closure for all federally permitted vessels and dealers, regardless of state, once the coastwide quota is projected to be landed. This amendment considers changing this trigger, so that the closure would occur once landings are projected to exceed the coastwide quota plus an additional buffer of up to 5 percent. The Council and Board would agree to the appropriate buffer for the upcoming year through the specifications process. The Council's Monitoring Committee and the Commission's Technical Committee would

provide advice on the appropriate buffer based on considerations such as stock status, the quota level, and recent fishery trends.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures (see **ADDRESSES**).

Entities affected by this action include fishing operations with federal moratorium (commercial) black sea bass permits. Fishermen who are only permitted to operate in state waters are not considered “entities” under the Regulatory Flexibility Act (RFA) and thus economic impacts on these fishermen are not discussed here.

Vessel ownership data<sup>1</sup> were used to identify all individuals who own fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses which may be regulated by this action. A total of 421 affiliates were identified as being potentially impacted by this action because they have a federal black

---

<sup>1</sup> Affiliate data for 2019-2021 were provided by the NMFS Northeast Fisheries Science Center’s Social Science Branch.

sea bass moratorium permit.

For Regulatory Flexibility Act purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is fishing (50 CFR §200.2). A business primarily engaged in fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Of the 421 potentially impacted affiliates, 412 (98 percent) were classified as small businesses and 9 (2 percent) were classified as large businesses based on their average revenues during 2019-2021.

The expected impacts of the proposed action were analyzed by employing quantitative approaches to the extent possible. Effects on profitability associated with the preferred alternatives should be evaluated by looking at the impact of the measures on individual business entities' costs and revenues. However, in the absence of cost data for the commercial black sea bass fishery, changes in gross revenues were used as a proxy for profitability. Where quantitative data were not available, qualitative considerations are included.

The nine potentially impacted large businesses had average total annual revenues of around \$8.35 million during 2019-2021. On average, black sea bass accounted for 0.65 percent of total revenues, or \$54,290, for these nine large businesses. The 412 potentially impacted small businesses had average total annual revenues of \$684,390 during 2019-2021. On average, black sea bass accounted for 2 percent (or \$16,572) of the total revenues for each of these small businesses during 2019-2021.

This action considers changes to the process used to allocate state commercial black sea bass quota, as well as a change to the trigger for commercial coastwide closures. The other alternatives in this proposed rule are administrative in nature (adding the allocations and payback provisions into the Federal FMP) and thus will not have



economic impacts on small entities. The revised allocation process will primarily impact the distribution of landings by state; it will have a minimal impact on total landings and total revenues. The proposed trigger for commercial coastwide closures adds a buffer of up to 5 percent to the quota level that would require a coastwide closure. This would have a positive impact on small entities, as it was designed to allow more states and their respective fishermen, to fully utilize their quota.

This rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 8, 2023.

---

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

#### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. Amend § 648.142 as follows:

- a. Revise paragraphs (a) introductory text and (a)(2);
- b. Add paragraph (a)(15);
- c. Revise paragraph (c); and

d. Add paragraph (f).

**§ 648.142 Black sea bass specifications.**

(a) *Specifications.* Commercial quota, recreational landing limit, research set-aside, and other specification measures. The Monitoring Committee will recommend to the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other measures, as needed, that are projected to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. The following measures are to be considered by the Monitoring Committee:

\* \* \* \* \*

(2) An annual coastwide commercial quota and corresponding state allocations.

\* \* \* \* \*

(15) A commercial quota overage buffer, of up to 5 percent, that would be used to determine when a Federal in-season closure would be triggered.

\* \* \* \* \*

(c) *Distribution of annual commercial quota.* The black sea bass commercial quota will be allocated to the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. Seventy-five percent of the coastwide quota will be allocated according to the following baseline percentage allocations: Maine (0.25) New Hampshire (0.25); Massachusetts (12.62); Rhode Island (10.68); Connecticut (3.00); New York (8.00); New Jersey (19.42); Delaware (5.00); Maryland (10.68); Virginia (19.42); and North Carolina (10.68). Based on the methodology described in the FMP, 25 percent of the quota will be allocated to three regions based on the most recent regional biomass distribution information. The three regions are: Maine-New York, New Jersey, and Delaware-North

Carolina. The regional allocations will be distributed among states within a region in proportion to their baseline allocations, except Maine and New Hampshire which each receive 1 percent of the northern region quota.

\* \* \* \* \*

(f) *Commercial state quota transfers.* Any state implementing a state commercial quota for black sea bass may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Transfer requests must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota, the Regional Administrator shall consider whether:

(i) The transfer would preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the Summer Flounder, Scup, and Black Sea Bass FMP and Magnuson-Stevens Act.

(2) The transfer of quota will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the

previous request or when notification of the approval of the transfer has been published in the **Federal Register**.

3. In § 648.143, revise paragraphs (a) introductory text and (a)(2) to read as follows:

**§ 648.143 Black sea bass accountability measures.**

(a) *Commercial sector fishery closure.* The Regional Administrator will monitor the harvest of commercial quota based on dealer reports, state data, and other available information. All black sea bass landed for sale in the states from North Carolina through Maine shall be applied against the quota in the state in which it is landed, and the commercial annual coastwide quota, regardless of where the black sea bass were harvested. The Regional Administrator will determine the date on which the annual coastwide quota, plus a buffer up to 5 percent as specified in the annual specifications, is projected to be harvested; and beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3' N lat. will be closed to the possession of black sea bass. The Regional Administrator will publish a notification in the **Federal Register** advising that, upon and after that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to commercial landings of black sea bass during a closure, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC.

\* \* \* \* \*

(2) *Commercial landings overage repayment.* If the annual coastwide quota is exceeded, any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas. All black sea bass landed for sale in a state shall be applied against that state's annual commercial quota,

regardless of where the black sea bass were harvested. The overage deduction will be based on landings for the current year through October 31 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish a notification in the **Federal Register** announcing such restoration.

\* \* \* \* \*

[FR Doc. 2023-10112 Filed: 5/12/2023 8:45 am; Publication Date: 5/15/2023]